

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-219573.2

**FILE:**

**DATE:** October 4, 1985

Pacific Lighting Energy Systems

**MATTER OF:**

**DIGEST:**

GAO will not consider a new protest of solicitation improprieties prior to bid opening where an earlier, essentially identical protest was dismissed for failure to comment on the agency report.

Pacific Lighting Energy Systems (Pacific) protests invitation for bids (IFB) No. N62474-85-B-5545 issued by the Department of the Navy (Navy) for the procurement of electrical and steam energy. Pacific objects to the use of advertised, rather than negotiated, procurement procedures as well as to several requirements of the IFB, and has incorporated, by reference, two prior protests involving the procurement of these services, one closed after withdrawal of a prior solicitation and the other dismissed after Pacific failed to comment timely on the agency report. We dismiss the protest.

Bid opening for this solicitation originally was set for July 16, 1985. Pacific first filed a protest with our Office on July 11. The protest essentially restated a prior Pacific protest concerning another solicitation for the same services (solicitation No. N62474-83-B-2934). Pacific received the agency's report on August 20; however, the firm failed to comment on the report until September 5, well after the 7 working day comment period provided in our Bid Protest Regulations. See 4 C.F.R. § 21.3(e) (1985). We therefore dismissed Pacific's protest.

During the exchange of submissions to our Office in connection with Pacific's first protest of this solicitation, the Navy extended bid opening several times, ultimately selecting September 12 as the bid opening date. On September 9, Pacific filed this protest, restating, in substantial part, the arguments it asserted in its untimely comments to the agency report. Under a separate submission, also filed on September 9, Pacific requested that we

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incorporate the record for the two earlier protests and invoke our express option provisions (4 C.F.R. § 21.8), and it waived an agency report.

The protest system endorsed by the Competition in Contracting Act of 1984 (CICA), implemented by our Regulations, is designed to provide for the expeditious resolution of protests with only minimal disruption to the orderly process of government procurement. See 31 U.S.C. § 3554 (West Supp. 1985). To that end, CICA requires, generally, that the agency withhold contract award or, if a contract was awarded within 10 days prior to the protest, direct the contractor to cease performance while the protest is pending. The agency is required to report within 25 working days from its receipt of notice of the protest from our Office, 31 U.S.C. § 3553, and the protest must be resolved by our Office within 90 working days. 31 U.S.C. § 3554.

Our Regulations technically permit the filing of a protest against apparent solicitation improprieties before bid opening, as Pacific has done here. Neither those Regulations nor CICA, however, contemplate the pre-bid opening resubmission and reconsideration of a protest identical to one already dismissed by our Office for the protester's failure to meet the 7-day comment requirement. Accepting such a refiling would, for example, permit a protester that neglected its obligation to comment or express interest in the protest to forestall a contract award or otherwise delay a procurement simply by resubmitting its comments on the eve of bid opening as a protest. This clearly would be inconsistent with the fair, orderly and expeditious procurement of services and resolution of protests intended by Congress and set forth in CICA. A protester that fails to comment on the agency report or express interest in the protest in a timely fashion in effect has abandoned its protest for our purposes, and will not be permitted to resubmit previously untimely comments as a new protest or otherwise revive the complaint.

As stated above, Pacific has raised no new protest issues; it merely has resubmitted its previously untimely comments to the agency report and sought to include its prior protests in this complaint. Under these circumstances, we will not consider the merits of Pacific's protest.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel